

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MILLER, Minors.

UNPUBLISHED
September 16, 2014

No. 320510
Wayne Circuit Court
Family Division
LC No. 99-385339-NA

Before: RIORDAN, P.J., and CAVANAGH and TALBOT, JJ.

PER CURIAM.

R. Lawrence, the mother of the two minor children, appeals as of right from the trial court's order terminating her parental rights.¹ We affirm.

Although Lawrence argues that the trial court erred in finding that a statutory basis for termination was established by clear and convincing evidence, the record indicates that she stipulated to the existence of a statutory ground for termination and only contested whether termination of her parental rights was in the children's best interests. By stipulating to the existence of a statutory ground for termination, Lawrence has waived appellate review of any claim relating to the existence of a statutory ground for termination. "A party cannot stipulate a matter and then argue on appeal that the resultant action was error."²

Even if Lawrence had not waived this issue, the record amply supports the trial court's determination that a statutory ground for termination was established. The Department of Human Services (DHS) has the burden of establishing a statutory ground for termination by clear and convincing evidence.³ A trial court's finding that a statutory ground for termination has

¹ MCL 712A.19b(3)(g), (i), (j), and (l). The trial court also cited MCL 712A.19b(3)(a)(i), (a)(ii), and (m); those grounds, however, appear to be applicable only to the putative father of the minor children whose parental rights were also terminated. The putative father is not a party to this appeal.

² *Holmes v Holmes*, 281 Mich App 575, 588; 760 NW2d 300 (2008) (citation and quotations omitted).

³ *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000).

been proven is reviewed for clear error.⁴ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made.⁵ The trial court found that termination of Lawrence's parental rights was warranted based on the following grounds:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.^[6]

The evidence established that Lawrence's parental rights to nine other children were previously terminated in November 2011. This Court's decision affirming that order indicates that "[Lawrence] has a history of neglecting her children," that evidence supported that Lawrence "has a demonstrated record of allowing abusive men around her children," and that "after over two years of little improvement, [Lawrence] was not even close to being in a position to regain custody of her children."⁷ At the instant termination hearing, the caseworker testified that Lawrence had been offered services as part of a court-ordered treatment plan in the prior proceeding, but she did not benefit from those services. A Clinic for Child Study evaluation performed in November 2013 indicated that Lawrence was not capable of completing "established goals or a treatment plan that would aid her in parenting her children more effectively," and that there was nothing in her most recent evaluation to suggest that she was any more equipped to care for her children than she had been previously. In light of the evidence that Lawrence's parental rights to nine other children were previously terminated, that the prior

⁴ *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

⁵ *Id.*

⁶ MCL 712A.19b(3)(g), (i), (j), and (l).

⁷ *In re Drew/Smith/Lawrence/Miller*, unpublished opinion per curiam of the Court of Appeals, issued July 26, 2012 (Docket No. 307559), p 3.

proceeding involved serious and chronic neglect, and that attempts to rehabilitate Lawrence were unsuccessful, the trial court did not clearly err in finding that grounds for termination were established based on MCL 712A.19b(3)(i) and (l).

The trial court also did not clearly err in finding that MCL 712A.19b(3)(g) and (j) were both established. As indicated, Lawrence failed to benefit from prior services. At the time of the termination hearing, she still lacked stable housing for a child. She had moved frequently in the preceding two years, sometimes because of eviction. At the time of the termination hearing, she was living with her mother in a two-bedroom apartment that had only minimal furnishings that were inadequate for a child. Based on the evidence presented, Lawrence was unable to complete established goals or a treatment plan that would aid her in more effectively parenting her children, and there was nothing in her most recent evaluation to suggest that she was any more equipped to care for her children than she had been previously. This evidence supports the trial court's finding that there was no reasonable expectation that Lawrence would be able to provide proper care and custody for her children within a reasonable time.⁸ In addition, Lawrence failed to have stable housing for at least six years and had remained in a domestically violent relationship with a man who did not provide financial support for her and her children and otherwise gave only minimal assistance. This evidence, together with Lawrence's failure to benefit from past services, supports the trial court's determination that the children were reasonably likely to be harmed if returned to Lawrence's home.⁹

Lawrence also argues that termination of her parental rights was not in her children's best interests. We disagree. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made."¹⁰ Whether termination is in the child's best interests is determined by a preponderance of the evidence.¹¹ In determining what is in a child's best interests, the trial court may consider a variety of factors including "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home,"¹² as well as a parent's history, psychological evaluation, and

⁸ MCL 712A.19b(3)(g).

⁹ MCL 712A.19b(3)(j). See *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded by state in part on other grounds MCL 712A.19b(5) (observing that whether a parent has benefitted from past services is relevant in assessing whether a child will be at risk if placed in the parent's home).

¹⁰ MCL 712A.19b(5).

¹¹ *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

¹² *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

parenting techniques.¹³ The trial court's decision regarding a child's best interests is also reviewed for clear error.¹⁴

Lawrence's parental rights to nine other children were terminated in 2011 because, despite years of DHS involvement and Lawrence's participation in numerous services, she was unable to properly care for the children. Lawrence continues to demonstrate an inability to attend to her children's needs. At the time of the termination hearing, she was unemployed and living with her mother in a home that lacked adequate furnishings for a child. In addition, her decision-making skills had not improved as evidenced by her efforts to hide one of her children from DHS. The Clinic for Child Study report indicates that Lawrence easily becomes overwhelmed, was not capable of completing established goals or a treatment plan, and that she was no better equipped to care for her children today than she was several years before. The youngest child was removed from Lawrence's custody at birth and had no bond with Lawrence. The older child was removed from Lawrence's care before her first birthday. The Clinic for Child Study report recommended that the children "not be made to languish in the [c]ourt system and they be provided an opportunity to be placed in a stable home[.]" In light of this evidence, the trial court did not clearly err in finding that termination of Lawrence's parental rights was in the children's best interests.

Affirmed.

/s/ Michael J. Riordan
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot

¹³ *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

¹⁴ *In re Trejo*, 462 Mich at 356-357.